

March 1, 1992

DEVELOPMENT ASSOCIATES

ADMINISTRATION OF JUSTICE

ASIA REPORT

David I. Steinberg
Georgetown University

1. Legal Traditions and Modern Tensions in Asia

The legal traditions of Asia are almost as variegated as its cultures. To discuss Asia as an entity in terms of legal traditions is arbitrarily to apply patterns and purpose to geographic convenience. These legal systems have been shaped by successive waves of influences on a myriad of smaller societies, each of which had developed indigenous legal [religio-dispute-settlement] traditions. Superimposed later were elements of the great Asian cultural and religious heritages, all of which formulated laws and established new social norms. Buddhism, Islam, Hindu, and Confucian concepts of law, intimately associated with concepts of the state, its leaders, religion, political legitimacy, and power formed the pre-colonial authority, and thus legal structures in Asia. Over time, influences over areas and groups shifted through expansion and contraction of these religions.

With the advent of colonial rule, a variety of European legal and administrative systems and institutions were forcibly inflicted on these already heterogeneous traditions. The British common law strongly influenced the subcontinent, Burma, Malaysia, and Singapore. The Napoleonic code was important in the former Indochina states, Dutch administrative law in Indonesia, and German law and traditions formed the bases for Japanese legal and administrative systems which in turn were imposed on Korea and Taiwan. The United States legal system exerted a profound influence on the Philippines, building on four centuries of Spanish rule.

Laws were often applied differentially; in some places older patterns served the family and rural areas or specific ethnic, linguistic, or religious groups or isolated regions, the colonial powers in some areas ruling indirectly, while westernized law applied to the elites and urban, internationalized centers. The formal and informal legal systems in the same state, serving diverse interests and often diametrically different, were often in internal tension, cemented only by the force of the colonial authorities.

Independence, international trade and investment, changing

administrations, and the alluring, and politically vibrant, appeal of modernity, which was both externally and sometimes internally perceived to be necessary for legitimacy, prompted both new and older states to write new constitutions, espouse revised legal codes, restructure their courts, and train staff. One such motivation was to eliminate the unequal treaties of the nineteenth century. Yet beneath these modernized institutions, sometimes only veneers, often lay traditional attitudes toward law, the role of the state, and concepts of power. Where in the west the legal tradition was a linear, incremental progression within a continuous cultural context, in Asia as a whole and in individual states the changes were sudden, stark, and often alien.

The judicial systems, then, were seen by some not only as hostile, but as tools by those with power to maintain authority. Insofar as they were modern, they may have been conceived as irrelevant to needs, even destructive of traditional, more personal means for dispute resolution. In many traditional or transitional societies, power is regarded as highly personal and finite, and thus to share it is to lose it; the judicial staff and processes are then viewed as elements of the personal entourage of state or local leaders. An independent judiciary in such states is an oxymoron.

Law and its reflection in the judicial system in the West also in part was developed through and mirrored the values of societies that are still institutionally and personally confrontational; socially and through judicial institutions that are said to be impartial, we confront each other and the state. Many Asian societies, on the contrary, go to great lengths to avoid either type of confrontation, seeking instead the mediation of the middleman or third party and informal dispute-settlement mechanisms, a fundamentally different approach from confrontation through the courts. These different perceptions color the role and utility of the modern judicial process in each society.

Thus, when the West espouses its perhaps singularly most important critical concept reflecting its view of justice--the Rule of Law--to which all [including the rulers] are theoretically equally subject, many in Asia might respond differently, by commenting, "The rule of what and whose law?" Except among westernized elites, the 'Rule of Law' as an archetypical slogan is meaningless in Asia. Law in many societies was equated with punishment; the state and its leaders, with an institutional monopoly on morality, were above law. Thus those who opposed the state or its leaders were, a priori, immoral. It is not too inaccurate to charge that in seeking to expand and improve the administration of justice, foreign donors unintentionally imposed their own images of law on Asian societies.

Yet many in the leadership of these societies, who are often western educated, recognize the value of these judicial systems both as measures and means of modernization. They are quintes-

sentially necessary for foreign relations and foreign trade, and will become even more important as interdependence of world resources and information grow.

It is outside the purview of this short essay to discourse on the specific business-oriented legislation necessary to encourage productive indigenous and foreign private investment. This is apparent, at least to such investors in any longer-range productive enterprises. Yet the private sector and law are linked somewhat more subtly within an 'administration of justice' system. Engaging in productive private sector activities not only requires the desiderata of investment laws and regulations and protection against nationalization, but perhaps more basic in any system of justice it requires two factors: predictability and an unprejudiced means for adjudication of disputes. The legal system supplies these elements in a modern economy even under abruptly changing political administrations. Any effective private sector activity is thus linked to modern systems of justice.

The modernization of judicial administration is thus important, both for the substance of the benefits it might bring and for the images of modernity it creates. Among foreign and domestic elites it may be a shared need and value, but this is a relatively small coterie of influential groups. Yet those who attempt to change legal [power] systems [and power, sex, and food patterns are probably the most difficult social attributes to alter], should do so understanding the nature of the traditions that may influence the efficacy of their efforts. As the history of judicial systems in Asia is both complex and diverse, this should prompt caution in donor or recipient expectations of early and efficacious results of aid.

To what extent are such systems of the 'administration of justice' actually about justice in distinction to law, and if so, whose justice? Justice, like fairness and corruption, are culturally defined, indeed justice is in part defined by what is considered unjust [see Appendix 1], and within any ethnically heterogeneous state may be then divergently interpreted. Societies are thus poised on the horns of two dilemmas: one is between employment of existing, modern legal system[s] and traditional, non-formal dispute-settlement mechanisms; and the other between classic patterns of personalized power together with the use of legal institutions for state or personal purposes, and modern views of justice as reflected in reformed legal systems, impersonal power, and the UN Universal Declaration of Human Rights, which most states have signed.

The formal legal system is a single, sometimes relatively minor, aspect of a more complex set of social control and dispute-settlement institutions, many of which are not codified under western-style law. Social, attitudinal, and institutional changes may be more a product of non-judicial evolution, the formal legal

structure later reflecting these changes. Is it then appropriate and efficacious to attempt to improve their efficiency and influence, and if so, to what effect?

The answer is that such efforts are necessary but rarely sufficient to affect and improve justice as defined by the United Nations through formal legal mechanisms. It is necessary because there is some national, and a great deal of international, demand for these changes in an increasingly interdependent world. It would not be sufficient if focus is solely on judicial administration, however, for if law and the judiciary reflect social norms [see Appendix 1], then legal reforms will not necessarily lead reform of core social and political values, and legal reform will be thus subverted.

In formulating this still tentative analysis, it is now necessary to turn to the work of international donors to see what they have done, and how they have articulated their programs, and draw from the evaluative literature what is known about the efficacy of such programs in Asia.

2. Justice, Democracy, and Human Rights Programming in Asia

"Administration of Justice" projects may present what apparently is a Cartesian clear and distinct budget category for assessment, but it does not begin to reflect AID's interest in or activities concerning law and the judicial system, let alone programs in rights and democracy in Asia. The emphasis is reoccurring, and seems now at a cyclical high.

This concern has extended to both the public and private sector, and foreign donors also have been exceedingly active in this field. In the United States some of this concentration was in the past an outgrowth of a search for international security, the fear of insurrections and revolution, especially from the left, and the concept that the 'Rule of Law' could help contain communism. It is no happenstance that in the United States May Day became reincarnated as Law Day. There is no question that foreign assistance in the United States was weighted in favor of containment, and largely justified to the Congress in these terms.

Many in the private sector [and the quasi-private, or quasi-public sector] shared this concern, and programming in fields related to law and justice and improvement in administration associated with law became important.

It is because of this importance that the AID records on this category of assistance are inadequate. There were many projects throughout Asia in which law [very broadly interpreted] seems to have played an important role; but law was most often linked with

other, related activities, such as public administration, improvement of tax or regulatory agencies, sometimes agrarian issues. Law programming in Asia directly by AID was then often associated with a substantive problem, not the courts, judicial administration, or justice by itself.

There seems to have been two bureaucratic reasons for this. Most importantly, direct AID programming in this field [in contrast to that through intermediaries, see Appendix 3], however broadly or narrowly defined, is both small and labor intensive--a great deal of staff time spent on relatively small amounts of money. Since pressures to reduce all mission staffs have been intense and continuous, USAIDs could rarely afford the luxury of such direct programming, even assuming their interest and the apparent need.

Second, although there have been many sectoral specialists in AID, there have been few authorities on law and development as the many lawyers employed were rarely in programming positions. Thus, [although the available records may be incomplete] in only a few cases did missions program in law directly: Afghanistan in a 'Legal Training Project,' and in Nepal in one 'Strengthening the Legal System.' In both cases, the monies were small.

PVOs and foundations, in contrast, were especially suited to pursue law and human rights programming. They were labor-intensive organizations, willing to sustain high administrative-to-program expenditure ratios, and closer personally to the grant-giving process and recipients than the larger USAIDs. They could respond quickly, without the often two-year project cycle delay. Their contacts were often more diverse, and they could act in cases and in support of organizations, such as those in human rights or legal aid, with which official relations were perceived to be inappropriate. At issue was not normally the question of the ultimate source of the funding [from AID], which was apparent even to the casual observer; it was the potential directness of such official funding that was considered improper.

There were many instances in Asia, however, of AID programming in law-rights related fields. They were accomplished through three different mechanisms:

1. Direct, through USAID programming in which law, or aspects of law, was linked to another, normally sectoral, activity [e.g., Land Mapping in Indonesia, Agrarian Reform in the Philippines, Laos, Vietnam; decentralization in a variety of states; public administration training, etc.];

2. Indirect, through USAID support of intermediaries on an individual grant basis [e.g., Development Program Grants, Operational Program Grants, or separate contracts], or through PVO-co-financing projects in a wide variety of countries. This was by far the most common form of activity;

3. AID/Washington activities [e.g., regional funding], in which AID/W held the funds and allocated them either centrally or in the field. The largest single category was the 1979-89 Asia Regional Civil and Human Rights Project [\$23.674 million; also the Asia/Near East Regional Human Rights Project, 1988-93 at \$1.453 million]. Since the late 1960s, AID has continued to fund the programs of the Asian-American Free Labor Institute [AAFLI], which provides support for labor rights and education projects in many countries in the region.

Now, however, the Democracy Initiative has given new financial vigor to this broad law-rights category. The FY 1991 totals for Asia are \$2.473 million. Yet Asia is no longer a priority; for the same year the Latin American Bureau totals are over \$69 million, Europe in excess of \$32 million, South Africa \$17 million, and the Africa Bureau an addition \$12 million plus.

AID proposes to spend over \$7 million in FY 1992 on the Democracy Initiative in Asia, with Indonesia [the largest, some \$2 million], Thailand, the Philippines, Bangladesh, and Nepal specifically included.

This allocation of substantial resources raises a continuing programming dilemma: whether a donor should provide assistance where the chances of success are greatest [by implication where needs might be less urgent], or where the needs are greatest but the chances of success are less. Obviously, this is a far more complex issue, and there is no simple resolution to the problem, as U.S. national interests and other considerations are involved. The calculations on the possibilities of success may also be highly subjective. There is no clear answer, but in making these basic funding decisions, a donor is committing a type of democratic triage--deciding which states to help, and which to leave to their own resources.

In earlier AID programming out of Washington, there were two major sources for law, democracy, and human rights activities. These were the Title IX [civic participation] Division of PPC, which ended about 1981, and the direct budget support [as opposed to project-specific grants] to The Asia Foundation beginning in 1968, until a separate line item in the congressional appropriations was established for it.

Title IX engaged in a wide variety of programming with U.S. organizations, although others were included, which in turn had links internationally. Work with legislatures and other types of activities, including research, that furthered the democratic process, participation, and law were their focus for the decade and more that they existed. A large network of interested organizations and individuals was developed, which was lost when the office was abolished.

The Asia Foundation was the premier organization funded by AID for law, human rights, and democracy programming. Its interest in these fields, however, predates AID support, and fostering democratic rights was built into its programming objectives in its articles of incorporation in 1954. The major legal programming of The Asia Foundation began in Korea in about 1962, but there no doubt were earlier and important precedents. Legal programming was also important in Thailand and the Philippines, and many projects were supported with legislatures and ministries of justice as well.

Law was linked in various Foundation reports in a manner which make it difficult to separate out solely legal programs without perusing each grant, which time does not now permit. In Asia Foundation annual reports, grant categories mentioned are, for example, law and development [1968], law and administrative services [1969], law and the judiciary [1984], legal systems and the administration of justice [1987, 1988]. What is evident is that the Foundation was spending in these categories a large percentage of its program funds, probably averaging about \$1 million annually [1984, \$1.2 million; 1986, \$927,228; FY 1987, 785,000; FY 1988, \$927,000; and in 1989 \$1.520 million, plus \$4.050 million for democratic pluralism and \$1.052 million for representative government].

In Korea, for example, which had one of the largest legal programs, assistance centered on the institution training all lawyers, judges, and prosecutors, court administration, ministry of justice improvement, publishing the Supreme Court records, training abroad, legal research, legal aid, attendance at international legal meetings, assistance in establishing a family court, para-legal activities, and related activities.

For work in the field of law, The Asia Foundation also received funds from other donors. The Luce Foundation provided them \$975,000, in three grants [1969, \$250,000; 1972, \$125,000; 1991, \$600,000]. Some of these funds went to hire staff to strengthen the Foundation's capacity to program in the field. Further discussion of The Asia Foundation's more recent legal programming will be found in Appendix 4.

Important as well has become the International Center for Law and Development. Founded in 1978 as a later incarnation of the International Legal Center, which itself was an offspin of the Ford Foundation's legal programming in the 1950s, the Center links poverty, human rights, law, and development [see Appendix 5 for a fuller discussion]. " Our efforts," the Center's documentation notes, "centre on the need to help rural communities gain greater capacities to change and control their social environments through processes entailing organization and efforts to secure more meaningful democratic participation and more effective recourse to law, notably human rights law."

For the 1990-92 period, the Center has a program on ecology

and human rights, and one focused on "participatory development and enforcement of international human rights standards by the rural poor and disadvantaged in Asia." This program is funded by The Ford Foundation.

Time and space does not allow here detailed discussion of the number of other donors that have assisted in programming in and support of law, such as the International Commission of Jurists, and groups focused on another professional or sectoral field but concerned about law within that field [e.g., the International Press Institute, AAFLI, Land Tenure Center, etc.]. It would be remiss not to mention in more detail The Ford Foundation [see Appendix 6]. Legal programming in the Ford Foundation started in the 1950s, and directly and through intermediaries has continued. Ford has continued to engage in law and human rights programming in Asia through its offices in Beijing, Manila, Bangkok, Jakarta, Dakha, and Delhi.

Mention should also be made of the activities of foreign organizations. The German foundation [e.g., Frederick Ebert Stiftung], has supported human rights activities and conferences throughout the region, and the International Development Research Center [Canada] has done important research on issues in corruption.

No comprehensive discussion of law, rights, and democracy and AID in Asia could neglect several important issues, the most controversial of which was support for the police through 'public safety' programs. Concern about public safety projects in Vietnam and their relationship to intelligence activities eventually prompted the Congress to force the stoppage of AID support to local police in the early 1970s, although an 'Internal Security' project in the Philippines involving the police continued until 1976. Police programming is, of course, a type of law project but one usually of a singularly different nature.

Closely related to police [and military] work has been those projects that had a primary [eradication, crop substitution, etc.] or secondary focus [rural or area development in narcotics-growing regions] on anti-narcotics activities. These projects were widespread, and involved sometimes direct links to the police and the law enforcement activities, and in some countries with the military. These too might be interpreted by some as a form of legal programming.

AID does not program directly with the military, except perhaps on anti-narcotics activities, but an unknown element of the legal and judicial equation is the degree to which foreign military officers who were sent to the United States for training were trained in military justice, law and development, or other fields. In many societies, the numbers of officers so trained totalled in the tens of thousands.

If, then, within the broad spectrum of law projects, one were to group all those supported directly or indirectly by AID involving enforcement of law [police, anti-narcotics, tax collection, customs controls, training of prosecutors, etc.], in contrast to those fostering rights under law or changing legal codes, the case might be made that in funds spent there may have been as great an emphasis on enforcement as on rights--this in regimes which, as demonstrated above, do not have a strong record of respect for rights, but most of which were strongly anti-communist.

If this is likely to have been the historic record of AID in Asia until perhaps a decade ago [and financial records are not available so this remains an hypothesis], it is also apparent, however, that the pattern has been changing. Now, there seems to be greater attention given to rights in the recent past than ever before in AID, and the stress is markedly different.

As might be expected, the AID record is mixed in AoJ-type activities, although at this early stage in analysis statistical data are lacking for AID and its intermediaries. Further effort should go into exploring the programming of the major donors in this field.

3. Law, Human Rights, and Programming for Democracy and Development in Asia

Most Americans link conceptually issues of democratic governance, human rights, open markets, and independent legal systems. We are historically correct to do so in our own society, and also perhaps so in Eastern Europe. Even when rights have been violated and legal systems seen as serving special interests, public outcries in the U.S. over time have ameliorated many of the issues. There is never a completed product, a static, desirable state of rights; the process of justice and rights is continuous, and is thus never completely satisfactory; progress, however, is evident.

Human rights are broadly interpreted in many societies, and encompass a spectrum of activities from freedom from torture to the 'pursuit of happiness.' Some constitutions include rights to work and leisure, education and health care, and protection of minority rights and languages. Most rights in such documents, however, are subject to law and concerns about national security and public safety that are purposefully vague; few are absolute. Thus the legal systems in many societies are in tantamount collusion with limitations on the rights that the fundamental legal document of the society--the constitution--upholds. Some states receiving major AID funding, such as Indonesia, deny the relevance of internationally respected human rights to that society.

As there is no single criterion for defining human rights,

there is no simple or single one for measuring or defining democracy. The term, fashionable following World War II, became ambiguously modified--'people's,' 'guided,' 'administrative,' and the like, corrupting the concept in autocratic fadism.

It is understandable but misleading to regard the formal trappings of democracy--elections--as its singular criterion, and to conclude that because a state held contested elections it must therefore be democratic. Elections, for example, may be indicators, and indeed are probably a formal component of any political process, but not necessarily related to either democracy or rights. They are sometimes bought or corrupted, sometimes ignored [Burma in 1990, Algeria in 1991], or overturned [Haiti in 1990]. Constitutions are written and rewritten [while passing an impressive monument on this writer's first visit to Bangkok in 1958, the daughter of the Head of the King's Privy Council, his guide, remarked "This is our monument to the constitution; and you know we only put up monuments to dead things." There probably have been over half-a-dozen constitutions since then]. Human rights problems have been recently cited in 'democratized' states such as South Korea and the Philippines.

Perhaps the ultimate test, if not definition, of democracy is the peaceful transfer of power between political parties [not factions of the same party] through the elective process. In Asia since World War II, this has only happened in the Philippines, Sri Lanka, and India. Even in those states, the Philippines elections was followed by the Marcos usurpation of power through martial law. In India, Indira Gandhi declared an emergency, suspending rights. Sri Lanka has been tortured by ethnic killing. Japan has seen the same party in power since 1953 [not quite as long as Mexico, and shorter than the Kuomintang on Taiwan], Korea has explicitly modelled its ruling party on that of Japan, with the same hope, perhaps expectations. Thailand has undergone recurrent coups and a student revolution, and Pakistan and Bangladesh have shared many military regimes. Singapore allows a modest opposition [a seat or two in the legislature], but brooks no interference in the state's paternalistic view of society. In Indonesia, the military enter their 26th year of power, with every expectation of continuity. One might go on; the democratic record in Asia has been poor, although elections have been widely held.

AID on the policy level has intellectually linked democracy, or political pluralism, with open economic systems and markets, or economic pluralism. The evidence from Asia questions the validity of the claim [at least over the medium term], whatever its accuracy elsewhere. Although most Asian non-communist regimes have at various times supported private sector activity, and some are economically the fastest growing states in the world, they have, as demonstrated above, a singularly reluctant attitude to relinquishing governmental control over the political process, although most regimes now regard the formality of elections as essential even if

some discard their spirit.

The link between democracy, human rights, law, and economic development may be present over the very long term, although that cannot now be demonstrated in Asia. Over a shorter, manageable span, however, the links are even more tenuous, and the evidence is overwhelming in Asia [although the past need not be prelude--societies do change]. Korea required from 1961 to 1987 for liberalization, not a full democratic state. Taiwan liberalized in 1991 [from 1929]. Thailand has vacillated; Singapore has yet to liberalize, and Hong Kong remains a colony with very little self government. The fastest growing states economically in the world retain a strong grip on the political process.

The question for donors, since all major bilateral donors now share the same basic policy stance linking foreign aid to human rights and political pluralism, is the gap between shorter-term programming and longer-term change. How long can a donor wait to expect a causal link between plural politics and economics? China and Vietnam have denied that there is a link at all.

Multinational donors in Asia, the World Bank and the Asian Development Bank, by their regulations cannot make distinctions on the basis of political or human rights grounds. Yet the major donors, especially the United States, can influence them to withhold support to countries violating human rights. Burma [Myanmar] is a case in point.

Will legal programming shorten or eliminate the gap between plural politics and economics? At this stage, the evidence is unclear, but the likelihood is limited for the former, far more distant for the latter. Attitudes toward political pluralism, economic pluralism, and law and the judicial system perhaps stem from common sources, which if not modified over time leads to asynchronous change--some reform here but possible stagnation there. This source may be concepts of power and the role of the state, which underlay the basis for state intervention, indeed sometimes penetration, into the lives, persons, economies, and representation of its peoples

The discussion here is not an attempt to limit programming, but rather to encourage realistic expectations over the life of projects, and, indeed, more extensive programming. Starts should be made, reforms are required, but realism is necessary.

4. Issues in Asian Legal Programming

Because law and judicial institutions, formal or informal, are so fundamental to societies and so complex, causal relationships between donor activities and overt institutional or attitudinal

changes, when they are apparent, are difficult to demonstrate. Evaluations, when they exist, are clearer on process efficacy than the ultimate product. Better legal textbooks, more advanced training, more efficient court administration and the like are obviously important, but they are means to more distant and complex goals.

There is also a set of fundamental issues that should be explored through study of recipient needs [articulated or implicit] and donor programming in the field of law. The answers to these questions cannot be determined here, but by raising these issues at this point, the questions can form a backdrop to the immanent field testing of the research design in Latin America. Based on previous programming experience in Asia, however, some questions can be essayed. These should be considered in desk or field studies in Latin America and in Africa, and in a variety of Asian countries suggested under selected criteria [see Appendix 2 for a recommended list].

These issues are grouped into three categories below.

A. General Issues

1. What is the relationship of AoJ to human rights and democratic systems of governance? Could improvement of AoJ lead to a more efficient but authoritarian system? If this is an issue, how might it be addressed?

2. Should AoJ programming be considered independently or tied to other, substantive issues [legal aspects of the environment, agrarian problems, etc.]? Which approach has proven more efficacious? Why? Should the two approaches be linked? Is there evidence from AID or other donor programming?

3. To what extent realistically can constitutional reform or legislative programming affect judicial reform or human rights?

4. Is it better for AID to concentrate assistance [if possible] in countries that have egregiously violated human rights or alternatively provide support where reforms are already well along?

5. To what extent do justice/law/human rights/democracy problems undercut sustained economic development?

6. Is reform and improvement of the administration of judicial systems neutral related to the improvement of justice? If not, then should thought be given to renaming the project 'the administration of legal systems' rather than 'the administration of justice' to reflect that position?

7. Are formal [westernized] court systems often ignored in the search for justice by significant elements of the populations

of developing countries?

8. Do formal legal systems reflect, rather than lead, attitudinal change?

9. If such changes occur first outside the court system or parallel with them, should AoJ projects be considered in a broader context and supplemented with non-court-centered programming related to legal literacy, rights, legal aid, etc.?

10. In addition to programming within judicial systems, would it be effective to program legal assistance with problem-oriented groups where there is a clear constituency to carry action forward?

11. To affect change in attitudes toward law and justice, should AID encourage in certain societies plural centers of power based on civic/community and professional or problem-centered interest groups?

12. Can AID sponsor research [through intermediaries] on issues related to corruption, democracy, and economic development? How does corruption relate to justice, law, and perceptions of their efficacy?

B. Recipient Issues

1. Do donors understand and/or are they responsive to recipient needs?

2. Do the recipient elites with whom donors work reflect their societal needs as a whole, or those of a class, ethnic group, region, administration, etc.?

3. How do donors know the answer to B?

4. Are there alternative and independent means to get answers to B above, or surrogate indicators demonstrating a positive or negative response? Are foreign academic institutions of use here?

C. Donor Issues

1. How far should donors go in administration of justice programming? Beyond judicial systems? How does the [essentially arbitrary] definition of program/project boundaries have an impact on the field of law, justice, human rights, and democracy?

2. How are AoJ issues [however broadly defined] integrated into Mission or AID/Washington programming, or are they tacked on, unrelated to potentially conflicting programs?

3. What types of donor-supported activities seem to be most effective [see Appendix 3]? Under what socio-political and/or

economic conditions?

4. Insofar as overseas training in technical aspects of law/justice is a programming tool, to what extent are the particularities of the U.S. judicial system meaningful in other societies? Should there be training in non-judicial fields?

5. Are donor staff adequate to design/monitor/evaluate these types of programs? If not, what is to be done in garnering internal or external competence?

6. If programs require a long-term commitment or gestation periods before the effects are known, what evaluative criteria can the donor apply [and when] to determine program efficacy?

7. If the donor has the capacity to identify problems, are there performance limitations on the types of projects/programs in this field in which the donor has recognized competence or incapability? Should the donor, even when a need is recognized, reject proffering support on the basis of lack of capacity to affect change?

8. Should the donor [e.g., AID] program directly or through intermediaries? Which has proven more effective? What types of intermediaries [foreign, indigenous, membership, problem oriented, etc.] are best for this purpose?

9. What type of coordination exists among donors internationally and between public and private institutions?

10. Does effective programming in AoJ activities [defined broadly] require geographic area and anthropological skills in addition to legal knowledge? If so, how might they be obtained?

11. It may be uneconomic for AID to consider internal hiring for such knowledge except as project/program monitors to act in peer relationships with outside specialists. Should external assistance be sought? Could any single institution have the capacity to advise on a worldwide scale?

12. Should AID now seek to develop evaluative criteria on which to consider future programming in this field? Centrally with field [culture-specific] collaboration?

5. A Tentative Action Agenda

Even at this early stage of the inquiry, it may not be too soon to explore an early, tentative, and revisable agenda for AID action. Any such plan would have to be based on reasonable assessments of the situation in a number of geographic areas, and mini-

mally educated appraisals of the answers to many of the issues and questions posed above.

At the same time, an inventory should be prepared of all major international NGOs and indigenous NGOs in the Asia region that have programs affecting the fields of law, justice, human rights, and democracy. [There are 18,000 indigenous NGOs in India alone, so the choice must be selective.] This could be accomplished with the assistance of such groups as the International Commission of Jurists [Geneva], the International Center for Law and Development, and the country offices of the Ford and Asia Foundations. The material would be of practical assistance to USAIDs in public co-financing programs, but the statistics on such groups might also serve as surrogate indicators of human rights problems and potential in any particular society.

The staged agenda is suggested below:

Stage 1 [underway]

Preparation of and field testing the research design in Latin America in Columbia. Following completion of that study, which should incorporate into its field work the questions articulated above, the research design should be revised.

Stage 2 [two months]

Rather arbitrarily [for any decision of numbers of countries to be studied would be in a sense arbitrary unless one studied them all], two additional countries from Latin America, two from Africa [one from East and one from West Africa to capture differing colonial legal legacies], and two from Asia should be the subject of desk studies but with the common research agenda. The issues and questions noted earlier should be addressed in short, analytical appraisals. These appraisals should not necessarily evaluate what AID has [or has not] accomplished. Rather, they should ask more fundamental questions about needs as articulated through data available in the legal, human rights, political, economic, and anthropological literature as well as AID and other donor documentation.

Stage 3 [one month]

If then, it is found that patterns emerge in access, efficacy, relevance, etc. of judicial systems, then a more mature intellectual framework might be constructed building in some of these elements.

Stage 4 [three months]

At that point, additional field testing and analysis of some of AID programming should be done in the different geographic

regions, the results analyzed and written up. During such field work, the analysts might wish to consider holding local conferences with PVOs and AID staff to get alternative views of the needs and the issues.

Stage 5 [final]

Field guidance is then proposed and cleared, and an internal AID conference[s] held [perhaps regionally] to discuss the guidance in the light of individual country experiences.

This schedule would allow new guidance to be in hand in early 1993, and certain types of programming [perhaps through PVO co-financing or other avenues] to be initiated.

In countries where it is deemed most appropriate and important that these activities be carried out by PVOs [indigenous and foreign], a local conference might be held to discuss the issues and most fruitful avenues of support and action.

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 1

Law, Justice, and the Scope of the Inquiry

The Administration of Justice [AoJ] project may have had its origins in specific problems connected with the courts and formal legal structures in Latin America in the early 1980s, but the concern of AID with the broader issues of justice [its administration, access, and related issues of rights] long predates the genesis of that specific project. This is evident both in the activities and projects supported by field missions and by AID/-Washington long before the AoJ project was started. Indeed, it was mandated by the Congress through Title IX and other aspects of the Foreign Assistance Act. In addition, other U.S. government agencies have also been concerned with these issues and directly or indirectly have supported programs and projects in areas associated with justice, some for two generations. Concerns about justice by the United States in the foreign aid context were often perceived as concerns for stability, especially in the light of various indigenous and foreign leftist threats.

Thus, there are administrative, temporal, and issues of scope that this report must address; AID is an important but not a lone actor in the field. Other donors have played significant roles in this arena, and not all have been American. Although any meaningful report must devote its analysis to issues that are germane to the sponsor in that sponsor's administrative terms, the duty of the writer is to explain the scope of the problem even as it is then redefined into manageable and actionable elements.

This appendix, therefore, is devoted to discussion of the broader aspects of the problem of justice intellectually and over time because there is no way that the issues could be explored in the body of a short report without skewing the report to more theoretical issues, detracting from what is hoped are sets of questions as guides for inquiry by the sponsor.

The administration of justice and the formal legal system are means through which a society codifies its normative views of the social and political order. Put differently, formal legal systems reflect views of justice that are culturally specific.

Justice is defined also by two other social factors: general acceptance by the population, and by cultural concepts of what is

injustice.

...in order to be considered just, a system of ethical or legal ordinances requires not only a conceived authoritative command but also a conceived popular consent, acceptances, or mutual covenant...In common experience, men turn to the vocabulary of justice when they confront a real or imagined instance of injustice...In this perspective, 'justice' means the active process of preventing or remedying what would arouse the sense of injustice...Justice is then more than a static equilibrium or a quality of the human will; it is, as common usage has always hinted, an active process of agenda or enterprise. The meaning of the term comes alive whenever one confronts injustice and 'does justice.'

[Encyclopedia of the Social Sciences, Vol. 9, pp.341-47]

Legal systems also reflect other societal norms--most importantly, the nature and appropriate use of power, hortatory and coercive, by the state. Legal systems are directly related to concepts of the state and its appropriate role.

The formal legal system of courts, administration of justice, and lawyers is thus the tip of the iceberg of social and attitudinal values particular to a society. As long as that society is in isolation, this then was matter for local concern. When, however, international issues invade once isolated communities, for international economic, diplomatic, political, and propaganda reasons the formal legal system must appear [to both some citizens and to foreigners--one result was the Asian unequal treaties of the nineteenth century] to be both modern and to adhere to international norms, even when they are at considerable variance with local tradition.

Even within a formal legal code, let alone more broadly explored, it is less efficacious to consider legal institutions as responding, in an economic analogy, to the laws of supply and demand than to consider the issues in a different context. Research in a variety of Asian societies has, for example, shown that modern legal and judicial systems may not address the problems of the people, or that people may not realize that they indeed have 'legal' problems [as in Korea], as these issues are considered to be something quite different. In some societies, modern judicial systems sometimes force traditional non-modern judicial settlements [Thailand], and in other societies legal systems were regarded as colonial, alien, and thus suspect. In many culturally heterogeneous societies, minority groups may eschew the formal legal system as a product not of foreign rulers, but indigenous exploiters.

Under such circumstances, issues of supply and demand are not relevant, and indeed may be misleading, because increased demand for alien systems often regarded as exploitative are minimal, and greater supply would increase an irrelevant bureaucracy, and indeed possibly greater [or perceived] exploitation. Indeed, it could rather be cogently argued that the demand for 'justice' is in response to the supply of 'injustice.'

Thus, formal legal systems are a small, admittedly increasingly important, element of access to justice. This access, when it exists, does so most often in traditional dispute-settlement modes that must be understood if the modern legal system is to have any meaning to the recipients of foreign aid, in contrast to the donors, who often assume the universal efficacy of modern judicial systems.

The impartial administration of justice cannot be expanded without understanding how the state and individuals have an impact on the society. Where power is personalized, and entourage formed around those with power, and/or where the state regards its role as the only moral and thus appropriate use of power, it is meaningless to expect a judiciary to be independent of government or those that exercise high political or economic controls. No modern society is static, however, and these traditional views are often eroding as education expands and international information becomes available to wider groups. The even modest independence of the Korean judiciary after extensive programming only took place after political reforms in 1987.

Further, many organizations and individuals link improvements in law and the judiciary to improvements of systems of justice, access, equity, development, and political progress. Evidence, while scanty and inconclusive given the difficulty of the nature of the issues, seems to indicate that improvements in law do not necessarily lead over any meaningful programmatic period to other and desirable social, political, economic, or institutional changes. Insofar as law reflects social norms, at best it may mirror or parallel changes in the social and political order.

Improvements in the administration of justice must not only be tied to better administration of systems staffed by better qualified individuals, and ones that are less arbitrary and have broader contact with international peers, but they must be more relevant to the peoples, and be more accessible in some culturally meaningful manner by such desiderata as ethnicity, race, religion, education, employment, caste, class, language, region, and the like. To achieve that goal would require social and attitudinal changes beyond the administration of justice itself, and a broader concept of the 'administration of justice.'

Foreign aid in the abstract must not only address needs, but it must be geared to what a particular donor can do well [or the

donor improve to do better]. Internal consideration of legal and judicial programming to be effective must be sensitive to local issues, and should be integrated into the planning fabric of an individual mission and the Agency more generally. Otherwise, programs in one country by one donor may be at cross-purposes.

This appendix, however, is not a plea to abandon AoJ programming. To the contrary, it is a call for broader consideration of the issues, and increased programming more catholic in approach and more attuned to culturally specific issues.

Issues of justice, equity, human rights, and political pluralism are likely to be continuing concerns among foreign aid donors into the future. The Japanese and the EC have already talked in these terms. If AID is to continue to play a vital role in this arena, it needs to consider training staff who are sensitive to the broad issues connected with justice to either act directly in some programming context, or as virgilian guides to others in the field.

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 2

Criteria and Recommendations for the Study of Asian Nations

The Asian cultural, social, and legal traditions are so heterogeneous that few, if any, actionable conclusions can be drawn from them without a greater understanding of the varying milieux in which these legal systems have operated. The United States government, and more specifically A.I.D., also has a variety of interests that prompt the need for and consideration of more in-depth knowledge, and thus study of, societies whose importance to the U.S. is of particular concern. This appendix will recommend the need for such activities.

Legal traditions have influenced contemporary legal practices and environments. Asian societies and cultures are [with one exception--Korea] highly diversified and are so numerous as to defy meaningful classifications for purposes of this activity. The legal systems from which contemporary administrations of justice have evolved are more easily categorized. They relate closely to concepts of the state and its role, and the role of power [see Appendix 1]. Any state that is 'modern' in its constitution and laws, and has signed the UN Universal Declaration of Human Rights, is still influenced, even inchoately, by these traditions.

In addition to local dispute settlement patterns, formal legal systems in Asia have evolved from, and often melded with, four separate legal traditions:

1. The Confucian State
2. The Indian concepts of kingship, Buddhism, and the administration of justice
3. Muslim law
4. The varying colonial traditions

The Confucian concepts of statehood and law have strongly influenced the legal patterns in the following countries/areas: China, Taiwan, Japan, Korea, Singapore, Vietnam, and Hong Kong, as well as among the numerous and entrepreneurial Overseas Chinese of Southeast Asia.

The basic religio-administrative and legal attributes of the Indian tradition has been a backdrop to government and societies on the sub-continent and in much of Southeast Asia. Buddhist law is critical to understanding Thailand, Burma, Laos, Cambodia, and Sri Lanka.

The heritage of Muslim law [the Shari'a] is vital in Pakistan, Bangladesh, and Malaysia, and to a lesser but nevertheless important degree in Indonesia and the southern Philippines.

The colonial traditions have had a profound effect on legal systems and administrations, and concepts of the access to and functions of the formal legal processes. The most important tradition has been that of the British common law. This has affected all of the sub-continent, Burma, Malaysia and Singapore. The French tradition affected the former Indochina countries, and Dutch law did so in Indonesia. The German legal and administrative system, adopted by Japan in the nineteenth century, was exported to Korea, where it is still evident along with Japanese edicts and regulations. The United States has profoundly affected legal institutions in the Philippines, and have had some far more modest effect on Korea.

Any analysis of the administration of justice in Asia should select some countries in which the United States had strong interests, and which are likely to be important to the U.S. in terms of trade, investment, security, cultural and intellectual relations, Asians resident in the U.S., and to AID into the future. This selection, together with the judicious choice of countries to be studied that encompass a broad spectrum of the four traditions categorized above, would produce results that could be considered generally representative of Asia from which, therefore, lessons or hypotheses might be drawn, and from which recommendations might be made for future activities. Thus this approach melds the very practical with what is intellectually desirable.

Other criteria have also been included in the selection process. These are: [1] the relative degree of freedom, political pluralism, independence of the judiciary, respect for human rights, and authoritarianism; [2] the degree of economic development or per capita income; [3] the extent that a state participates in the world economy through trade and investment, and thus has an external need for modern and internationally recognized legal systems; and [4] the degree to which there is equity in access to the formal [or informal] legal and administrative systems. Other issues that have been considered include the role of the military, the heterogeneity of the society, and insurgencies centered on perceived injustices.

On the basis of assuring a representative compendium of the traditions and contemporary situation in Asia, the following countries are recommended for study:

1. Korea: a Confucian state with close links to the Japanese legal/administrative system; strong U.S. but no AID interest, as AID has no remaining interests in any Confucian state; recently [1987] politically pluralistic with a more independent judiciary; important military involvement in the state; and a culturally homogenous society.
2. Philippines: Strong U.S. and AID interests, and a system most influenced by the U.S., with important Muslim undertones in the south; now politically plural with a free press, and a free judiciary.
3. Thailand: Lacking a colonial past, Thailand is unique among possible choices. There is a strong U.S. and more modest AID interest there; it is a quintessentially Buddhist culture influenced by Indian concepts of kingship; and a reappearing military presence.
4. Indonesia: Strong U.S. and AID interests within a modified Islamic and continental legal system with an authoritarian base controlled by the military; an exceptionally heterogeneous society.
5. Pakistan: Strong U.S. and AID interests; a Muslim legal resurgence; a common law background; strong military influences.

A few words should be written on why other countries were not recommended. India would be an important study of a society emergent from the common law tradition, but the caste structure and Hindu religious background, plus the vastness of the material and literature, would make the study more difficult and allow fewer lessons than another choice, such as Pakistan. Singapore as a Confucian society is perhaps too small as a city-state from which to draw lessons. Hong Kong, laissez faire par excellence, is still a colony and is not representative.

At this time, it is clear that if the study has to focus, these societies offer the most promising mix. It is not appropriate now to make recommendations whether all or any of these societies warrant field research. It may be that they could be studied through desk research alone, but this could better be determined when the client's interest has been ascertained, the timing and funding determined, and the research design tested in the Latin American context.

DEVELOPMENT ASSOCIATES

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 3

Programming Schema/Modalities

In reviewing the available documentation on legal programming, including the administration of justice, it seemed useful to create a chart of those types of programming that various donors have employed in the past to improve the field, however narrowly or broadly it is defined. The purpose of including it here is to note the variety of methods and institutions that might be employed in such efforts. At a later date, we will attempt to judge the effectiveness of some of these activities. Here they are listed with some short examples or models. It should be remembered that these categories are not exclusive: programming crosses many modes. Three general divisions of this schema are: [1], Institutional programming mechanisms [AID or funded intermediaries]; [2] Typologies of assistance by various categories; and [3] Programming modes. Any project or activity would normally fall into all three categories.

1. Programming Mechanisms

A. Direct [AID]

B. Through Intermediaries [AID funding other groups]

1. U.S./International

a. Public Intermediaries [e.g., The Asia Foundation]

b. Foundations/PVOs [non-membership, e.g., The Ford Foundation, Rockefeller Foundation, AAFLI]

c. PVOs [membership, e.g. Catholic Relief]

2. Indigenous

a. Public [e.g., a ministry or court]

- b. Private [professional, etc, e.g. bar association, judicial scriveners]
 - c. Private PVOs [e.g., local human rights groups]
 - 3. Regional [e.g., LAWASIA]
- 2. Typologies of Assistance
 - A. Advisory Services [technical assistance]
 - 1. Internal to Organization [e.g., hiring expert legal/justice related staff]
 - 2. External to some other Organization [e.g., funding to allow organization to hire staff]
 - B. Training
 - 1. Staff training
 - 2. Internal to Country [e.g., formal, legal training]
 - 3. External
 - [e.g., long, short, formal, on-the-job, etc., degree, internships, etc.]
 - C. Books/Professional Materials
 - D. Equipment/Buildings/Capital Equipment [e.g., equipment for law libraries]
 - E. Institution Building
 - [e.g., funds to hire staff for law school, etc.]
 - F. Funds for Action Projects [e.g. rural legal aid]
 - G. Research [e.g., survey on attitudes toward law]
 - H. Conferences/International Contacts
 - [e.g., attendance at LAWASIA meetings]
- 3. Programming Modes
 - A. Constitutions [e.g., revising constitutions]

B. Legislatures/Legal Drafting [e.g., working with legislatures]

C. Formal Legal Systems

1. Courts [e.g., approving administration of justice]

2. Ministerial/Executive Branch
[e.g., public administration, regulatory agencies, etc.]

3. Law Schools

4. Paralegal Organizations
[e.g., judicial scriveners]

D. Professional Organizations [e.g., Bar Associations, etc.]

E. Informal Systems

1. Dispute Settlement

2. Legal Aid

3. Legal Counseling

4. Human Rights

DEVELOPMENT ASSOCIATES

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 4

The Asia Foundation

From its inception in 1954, The Asia Foundation articulated its role as the furtherance of democracy and democratic institutions in Asia. This was conceived broadly to strengthen internally those critical institutions in any society in which the Foundation worked to contribute to this broad aim, to allow them to play a more constructive role in their own societies, and to link those institutions to broader international organizations, especially American but not limited to the United States. Today, the President of The Asia Foundation has been quoted as saying the goal of the Foundation is to help make democratic institutions in Asia work.

From a relative early period, law and legal programming, including the administration of justice, was an important element in that effort. Some figures have been gleaned from the annual reports and included in the body of this effort. Here, current [1991] highlights of the Foundation's program are mentioned.

Democratization is a major focus of Foundation activity, and the organization is aware that the process is both diverse and complex. The Foundation notes that it has provided support to "virtually every national parliament in Asia." It has broadly supported the field of law and justice both as an essential component to democratic governance and as a necessary underpinning to continued economic growth. It has supported activities with a variety of NGOs and universities related to law, and through assistance from the Luce Foundation, it will work on legal reform and accountability in Thailand, China, the Philippines, Laos, and Mongolia. The Asia Foundation from its earliest days has had close associations and programming with the media and the press. The Foundation continues to program regionally in law with a variety of organizations.

In addition to its programming in law through its field offices and its San Francisco headquarters, the Foundation's Center for Asian Pacific Affairs [CAPA] has embarked on a two-and-a-half year program on democratization in Asia. It conceives as the

process of democratization as three phases: political liberalization; democratic institutionalization, and democratic consolidation. Although the first phase may occur quickly [Korea] or slowly [Thailand], the second phase "requires the creation of institutions, laws and processes that:

1. allow for regular, non-violent, and meaningful political competition;

2. enable popular participation in the selection of leaders and policies; and

3. guarantee the civil and political liberties necessary for meaningful political competition and participation."

The following factors are central to the Foundation's conceptualization of the issues religion, ethnicity and culture, the structure of the state, levels of political participation, civilian-military relations and national security concerns, and economic conditions.

,

DEVELOPMENT ASSOCIATES

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 5

The International Center for Law and Development

The Center, a non-profit organization founded in 1978 as a descendent of the International Legal Center, is engaged in a two-year program financed by the Asian regional program of The Ford Foundation concentrating on "Participatory Development and Enforcement of International Human Rights Standards in the Rural Poor and Disadvantaged in Asia."

The Center notes that although there has been a proliferation of Asian NGOs over the past decade concentrating on human rights in both more liberal and authoritarian societies, they have generally concentrated at the national level in their programs, and they have failed to use fully the international human rights law and institutions in their programs. The Center believes that "In some countries because of the vicious attacks on the independence of the judiciary and the legal profession, the national forum can no longer provide redress and justice to the victims of human rights violations. In other countries, which are turning back to democracy, governments are displaying increased sensitivity to international public opinion."

The program will use six international human rights instruments:

1. The UN Convention of the Rights of the Child;
2. The Convention on Elimination of All Forms of Discrimination Against Women;
3. The Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries;
4. The Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families;
5. The Draft Convention on the Control of Trans-boundary Movement of Hazardous Wastes; and

6. The UN Declaration on the Human Rights to Development.

The project will include the preparation of briefing documents for Asian NGOs, national meetings, regional issue papers and strategies, documentation and dissemination of materials and data, and the preparation of a final monograph on key concepts, problems, and strategies for affected groups.

In addition to their program on Ecology and Human Rights, which is supported by the Swedish Agency for Research Cooperation, a third project, supported by the Swedish International Development Agency, is on "Strengthening National Human Rights Institutions for the Rural Poor in Developing Countries. It will focus on the judiciary and the legal profession. Under it, two working groups will be established.

The first, Asian Working Group on the Independence of the Judiciary, would consist of seven to ten leaders of the legal profession, and chaired by a retired judge. The group would focus on two tasks: identification of factors leading to the erosion of the independence of the judiciary, and formulation of strategies to arrest such erosion and strengthen the independence of the judiciary; and identification of specific legislation and policies that violate or strengthen established norms on the judiciary's independence. Reports will be prepared for the International Bar Association and the International Commission of Jurists.

The second is the Asian Working Group on the Legal Profession. It would consider ways the judiciary could help establish the independence of the legal profession, reforms needed to assist the legal profession in its defence of human rights, and reforms necessary to enhance the judiciary's effectiveness and its ability to enforce the human rights of the poor and disadvantaged.

The Center is a small organization, and the magnitude of the funding involved in these programs is not now known, nor is the record of their previous activities, as staff of the Center are currently travelling overseas.

DEVELOPMENT ASSOCIATES

ADMINISTRATION OF JUSTICE

ASIA REPORT

Appendix 6

The Ford Foundation

The Ford Foundation probably has the longest and the most distinguished record of assistance in law in Asia, although time does not now permit extensive review of their past programs. It was The Ford Foundation that originally brought Japanese judges to the United States in a major program in the early 1950s, and then later established the International Legal Center by making independent its office that had responsibility for much of the Foundation's legal work.

The Ford Foundation's recent and current programs in a variety of Asian countries are based on field activities, and are in addition to projects carried out from its headquarters.

Bangladesh

For the past four years, Ford has engaged in a Human Rights and Social Justice Program consisting of three strategies: [1] support for building the capacities of local human rights organizations, including the Coordinating Council for Human Rights in Bangladesh, and the Madaripur Legal Aid Association. These organizations monitor election and engage in legal literacy and traditional mediation efforts; [2] assistance to legal professions and the government to enforce human rights; and [3] encouragement of advocacy groups to do investigative research and NGO training in political and civil rights.

Since political liberalization. the Dakha program will also assist in civil-military relations, public institutional reform including village level institutions, womens' rights, the rights of ethnic minorities in the Chittagong Hill Tracts, and strengthening NGO advocacy.

Indonesia

Since the Indonesian government does not recognize the applicability of internationally recognized human rights in Indonesia, and since all Ford projects must have prior approval of the Indo-

nesian government, the Foundation must program obliquely in this field. Some activities and fields include resource rights and access [in, for example, Irian Jaya and Kalimantan], environmental law, women's rights, human rights advocacy and legal aid, and governance through sectorally focussed programs on rural poverty and resources, and consumer advocacy.

China

The Foundation concentrates its programs on development and reform of the legal system. Training and research is planned to "strengthen major centers of legal education and research, enhance the capabilities, integrity, and independence of key legal institutions, and encourage research with applications for law and policy-making in areas of direct relevance to rights and governance." Included in these efforts are grants to the Institute of Law at the Chinese Academy of Social Sciences on the theory and practice of rights, work on constitutional law at the Huaxia Institute of Legal Culture, and to the Administrative Legislation Research Group. Work is also expected at Beijing and Fudan universities in these fields.

Thailand

The underlying rationale of the Thai program, cutting across all sectors, is the "'secularization' of the bureaucracy" and "breaching the monopolistic barriers of bureaucratic decision-making," by opening up the process of regulations and legislation to a broader spectrum of the society. A critical concept is the strengthening of local interest groups, local communities, local NGOs, and the academic community. The Thai program is thus conceived holistically, although there are various foci including aspects of refugees and their rights, and women's affairs.

The Philippines

The Ford program addresses fundamental problems of justice and governance by helping to build civic institutions to help the poor and weak, and increase their capacity to use the legal institutions to protect and promote their rights and improve the government's response to their needs. Grants include public interest law, linking the NGO community to law schools, improving legal services, civic participation by NGOs, and support to various grass roots level organizations. An important element of this overall program is related to social justice and land rights. Ford support for this category alone is significant, some \$1.7 million over several years and to a wide variety of institutions.

India, Nepal, and Sri Lanka

The fundamental issue in rights and governance in India is national unity within the framework of ethnic and regional diversity

In Nepal, with a democratic revolution, the roots are shallow and poverty pervasive. In Sri Lanka, the political outlook is still uncertain. In India, the Foundation supports legal literacy and professional legal services for disadvantaged groups, research and advocacy on natural resource and environmental law, and women's rights litigation and advocacy.

Since 1975, the Foundation in India has focused its program on development of public interest law with two specific goals: improving access to justice for disadvantaged groups, and improving the knowledge and experience of professionals engaged in social justice.

In India alone, the Foundation estimates that there are some 18,000 NGOs in all fields, and the Foundation is assisting some to service better disadvantaged groups, and is planning to assist the formation of a NGO Advocacy Institute to provide training and assistance to such organizations.

DRAFT

February 15, 1992

D. Steinberg

ADMINISTRATION OF JUSTICE RESEARCH DESIGN

Development Associates

Purpose

To prepare analyses of the AID-supported Administration of Justice [AoJ] projects in Latin America, Asia, and Africa as a necessary condition for making recommendations for future Agency actions.

Products

A set of **actionable recommendations** to AID for future programs/projects on regional/national/cultural bases, as necessary, through:

1. Analyses of the articulated and inchoate needs and demands of the heterogeneous elements of various societies/regions for justice as variously defined;
2. Analyses of U.S. foreign policy and developmental objectives in the geographic areas of concern, and their relationships to [1] above;
3. Analyses of A.I.D. programs/projects and their results in terms of [1] and [2] above;
4. Analyses of the integration of these efforts into country plans and priorities, mission statements, and other AID policy documents;
5. Analysis of the organizational and administrative capacity of AID to conceptualize, administer, evaluate, and reformulate as necessary such programs/projects;
6. Analysis of the activities of other donors in this field;
7. Analysis of program intermediaries [foundations, PVOs, NGOs, both indigenous and foreign] and their

roles in this process.

Scope of Inquiry

Two elements must limit the scope of this study. First, the Administration of Justice is one necessary but limited aspect of U.S. concerns for achievement of foreign policy and developmental objectives. The links [be they causal, sequential, parallel, and/or temporal] between democratic pluralism [The Democratic Initiative] as a foreign policy goal and economic [market] pluralism as a developmental need are only partly encompassed by the AoJ. Second, justice conceptually is culturally determined, as are other related concepts such as fairness or corruption. They reflect societal norms.

Access to some system of justice, modern or traditional, is an aspect of equity, as indeed is access to the market. Insofar as development and long-term U.S. foreign policy objectives relate to political stability, equity becomes important. Any inquiry that purports to address program accomplishments in AoJ thus must consider these broader range of issues in the research design, even if it must exclude some of these more basic considerations in its inquiry for reasons of time and money.

Thus, the study will concentrate on projects and programs within the AoJ category, but will take cognizance of their role and implications more broadly, and especially how AoJ activities compliment, supplement, or are at variance with these elements.

Conceptual Framework and Issues

The study will address:

- A. The role of the modern judicial system in political, social, and historical contexts, since many systems were imposed through colonial/foreign influences.
- B. The relationship, if any, of the modern judicial system to traditional dispute settlement and adjudication methods.
- C. Access [by class, region, class, ethnicity, religion, caste, etc.] to modern or traditional judicial/dispute settlement institutions or facilities.

D. The process of judicial review.

E. Determinants and concepts of legal justice as defined by the culture and internationally accepted norms [e.g., UN Declaration of Human Rights, etc.].

F. Elements of the legal system.

G. Dimensions for assessing the functioning of the judicial system:

1. Judicial independence
2. Fairness
3. Accessibility/responsiveness
4. Popular perceptions of the system
5. Reliability
6. Professionalism
7. Efficiency
8. Accountability
9. Corruption

H. Non-judicial factors that impinge on AoJ and related projects.

I. Constitutional factors that have an impact on judicial systems and justice.

J. Expectations of donors, intermediary organizations [e.g., The Asia Foundation, etc.], and recipient institutions concerning results.

K. AID, other donor, and intermediate precursors to the AoJ program and their relationships, if any.

Methodology

This study must be interdisciplinary in character, both drawing upon a variety of specific social science skills, geographic area and culturally specific knowledge, and legal acumen, as well as integrating them throughout the analyses.

The research will explore primary and secondary material from the academic and legal communities and from AID and other donor and intermediate sources. Selected practitioners will be interviewed from a variety of donors, as will accessible academic specialists on these studies.

Selected countries to be investigated will be chosen based on past types of projects and intermediaries, level

of development, judicial systems, and other relevant factors. Specific cases studies will be documented. Most studies will be limited to desk research, although a few field studies may be inaugurated. Time and funding will not permit an extensive series of such efforts. The research design will be field-tested in Columbia in April 1992, and then modified and applied to other Latin American states as well as Asia and Africa.

Evaluation Questions

The following illustrative series of questions will be asked:

A. For each society under review:

1. The Setting
2. The Needs
3. The Programs/projects
4. The accomplishments
5. Costs related to accomplishments
6. The administration of the program/project
7. The generalizable lessons from this study
8. Recommendations for future projects

B. For donor/intermediary institutions

1. Adequacy of conceptualization of the issues
2. Staff capacity
3. Administrative systems
4. Integration of AoJ activities into mainstream organizational priorities and activities
5. Follow-up/evaluative capacities and activities

C. For the program as a whole:

1. Program lessons from the analyses
2. Administrative lessons from the analyses
3. The efficacy of intermediaries generically and

specifically

4. Recommendations for policy actions
5. Recommendations for program/administrative actions
6. Recommended funding levels by area/program, etc.
7. Recommended evaluation requirements, timing, and methodologies

February 20, 1992
D. Steinberg

ADMINISTRATION OF JUSTICE

Programming Schema/Modalities

[Applicable to AID and to Intermediaries]

1. Programming Mechanisms

A. Direct

B. Through Intermediaries

1. U.S./International

a. Public Intermediaries

b. Foundations/PVOs [non-membership]

c. PVOs [membership]

2. Indigenous

a. Public

b. Private [professional, etc]

c. Private PVOs

3. Regional [e.g., LAWASIA]

2. Typologies of Assistance

A. Advisory Services

1. Internal to Organization

2. External to some other Organization

B. Training

1. Internal to Country

2. External

[long, short, formal, on-the-job, etc.]

- C. Books/Professional Materials
- D. Equipment/Buildings/Capital Equipment
- E. Institution Building
- F. Funds for Action Projects [e.g. rural legal aid]
- G. Research
- H. Conferences/International Contacts

3. Programming Modes

- A. Constitutions
- B. Legislatures/Legal Drafting
- C. Formal Legal Systems
 - 1. Courts
 - 2. Ministerial/Executive Branch
 - 3. Law Schools
 - 4. Paralegal Organizations
- D. Professional Organizations [e.g., Bar Associations, etc.]
- E. Informal Systems
 - 1. Dispute Settlement
 - 2. Legal Aid
 - 3. Legal Counseling
 - 4. Human Rights

ISSUES

Role of Democratization in relation to law?

Role of Representative Government?

Role of Public Administration related to law?

Essential issue of the concept/employment of power and law and justice?

In reviewing, even in a cursory manner, the reporting on law in The Asia Foundation, the concept of law and its relations received different stresses in different periods. These included: law and development, resource management, human rights, democracy, public administration, private sector, etc. Even to determine what a single organization did in the administration of justice, one must go beyond the law field to other categories depending on our definition of justice and needs in any society.

We must also review the activities of a variety of other organizations [intermediaries] to determine their roles; e.g., The Ford Foundation, The Luce Foundation, the International Legal Center, various human rights groups, etc.

It seems necessary first to define the term 'justice' and then 'the administration of justice.'

6207 Goodview Street
Bethesda, Maryland 20817

August 2, 1992

Expenses: Trip to New York, Ford Foundation

June 18, 1992

Parking [receipt]	10.00
'Stagecoach' taxi: New York	
Laguardia to Ford Fdn.	15.00
Tolls	2.50
Taxi: Ford Foundation to	
Laguardia: 15.75	
Tolls	2.50
Tips	2.00
	20.25
Mileage: 12 miles X two	
X \$0.27	6.48

David I. Steinberg